IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1307 of 1997

in

SPECIAL CIVIL APPLICATIONNo 4872 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

LAXMIKANT PRANSHANKER SHUKLA

Versus

CHIEF EXECUTIVE

Appearance:

PARTY-IN-PERSON for Appellant

MR DEEPAK V PATEL for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 30/03/98

ORAL JUDGEMENT (PER C.K.THAKKER J.)

This appeal is filed against the judgment and order passed by the learned Single Judge in Special Civil Application No. 4872 of 1995 decided on December 11, 1996. That petition was filed by the appellant-petitioner for appropriate writ, direction and/or order, for the following relief in terms of para 23, namely-

(1) Retrenchment compensation with interest.
(2) Back wages w.e.f. 1.4.1989 till this date.
(3) Arrears of pay from 1.4.1986 to 31.3.1989 with consequent benefits with interest."

The case of the appellant was that he was appointed by respondent on January 1, 1980. He was confirmed on April 16, 1980. According to him his, services came to be terminated abruptly by an order dt. 31st March 1989. As per the say of the appellant there was no age of retirement and hence he could not have been superannuated from service on the ground of reaching age of superannuation. It was also his case that before terminating his services, no notice was issued and no retrenchment compensation was paid and hence the action was in contravention of the provisions of Sec.25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act). He was, therefore, entitled to all benefits.

When the petition came up for hearing before the learned Single Judge, the learned Single Judge held that the petitioner was entitled to an amount of Rs.15,000/towards performance increment. It was the case of the appellant that on that count he was entitled to an amount of Rs.19,963/- and since the amount was not paid in time, he was entitled to interest thereon.

The learned Single Judge in the impugned order observed;

"The respondent management is directed to pay Rs.15,000/- towards performance increment to the workman in lumpsum as full and final settlement of the claim foor performance increment and on payment of such amount, the workman will not claim any further amount towards performance increment. The employee is not raising any claim as he has raised in the amended petition and his claim is confined to the aforesaid performance increment which is ordered to be paid by this court in lumpsum to him."

The petition was accordingly disposed of.

Mr.Shukla, party-in-person, has contended before us that the learned Single Judge has granted relief for payment of Rs.15,000/- towards the claim of the petitioner on the count of peformance increment alone. But over and above performance increment he was entitled to a substantial amount by way of retrenchment compensation, back wages and other consequential benefits including interest. He also argued before us that there was no amended petition and there was some mistake in the order where "amended petition" was referred to by the learned Single Judge. Now, looking to the record, it does not appear that a formal amendment was sought or granted by the court but from Exh.M at page 54, it appears that some prayer for retrenchment compensation, full back wages under Section 25-F of the Act and difference of Annual Increment under Sec.9-A of the Act was there. In para 13 (prayer clause) it was stated as under:

(a) Retrenchment compensation for
4 1/2 months @ Rs.3572/- p.m. Rs. 16,000/-

(b) Full back wages from 1.4.89 to
31.1.96 @ Rs.3572/- p.m. for
82 months. Rs.2,92,900/-

(c) Annual increment and conseque-
-ntial benefits from 1.1.86 to
31.3.89. Rs. 19,960/-

(d) Interest @ 12% p.a. for 82
months. Rs. 19,960/-.

Rs.3,48,820/-

Probably the learned Single Judge observed that part as amended petition. In any case after the order was passed by the learned Single Judge, an application appears to have been made before the learned Single Judge at Exh.O page 66. In the said application, the facts were mentioned by the present appellant referring to order passed by him (Late Justice Shah) and a prayer was made to do justice to his case by directing the respondents to pay retrenchment compensation and full back wages.

It appears that the said application Exh.O was treated by the learned Single Judge as a "Note for speaking to minutes"and on 18th of September 1997, "Oral Order on Note for speaking to Minutes" was passed. In the said order it was mentioned by the learned Single Judge that a prayer was made by the petitioner party-in-prson to modify the order passed by this court in Special Civil Application No.4872 of 1995.

The learned Single Judge, however, observed:

"This Court vividly recollects that at the time of hearing, theparty-in-person was given full hearing and every attempt was made by this court to see that as such payment will be secured to the party-in-person is secured." " Mr.Deepak V.Patel who appeared for theoriginal respondent was persuaded by this court to agree with the demand partially and this court ultimately passed the order" directing Respondents to pay an amount of Rs.15,000/- and accordingly payment was made.

The court also observed; "This Court also vividly remembers that he fully and whole heartedly accepted the said amount but insisted that the amount of Rs.15,000/towards performance increment should be paid to him at the earliest as the Management is likely to harass him in releasing such amount. To allay such apprehension on his part, the management was directed to release the amount ofRs.15,000/- towards performance increment to the workman within ten days from the date of order and the said amount was released andpaid to thepetitioner by Draft No.50269 along with letter dated 18th December, 1996. The party accepts the factual position."

The learned Single Judge then observed " Now, in view of the aforesaid, the present Note for Speaking to Minutes does not lie. I have gone through the Note for Speaking to Minutes and when the party himself has accepted the aforesaid amount willingly and in full and final settlement of his claim, this Note filed for the purpose of Speaking to Minutes is thoroughly misconceived and the same is rejected." This note filed for the purpose of speaking to Note is thoroughly misconceived and the same is rejected."

We have heard Mr.Shukla, party-in-person at considerable length. He stated that the statement made by the learned Single Judge in the above order is not correct. According to him, when his claim was for an amount of Rs.4,00,000/- approximately; he would not give it up by accepting a paltry amount of Rs.19,695/- due and

payable by the Management towards performance increment and even if it is assumed that towards that claim, instead of entire amount with interest, he had willingly accepted an amount of Rs.15,000/- towards full and final settlement, obviously it was for one claim only. Regarding remaining claims, a substantial amount was payable to him by the respondents and he had never agreed and never given up the claim towards those claims.

We are afraid we cannot uphold the contention of party-in-person. It is settled law that when a statement is made in a judgment or in an order, it must be accepted as correct. In the instant case, however, there is something more. After the petition was disposed of by the learned Single Judge on December 11, 1996, and when the appellant was paid Rs.15,000/- towards all his claims, he filed an application which was treated by the learned Single Judge as a "Note for Speaking to the Minutes." And even in that order, the learned Single Judge has in no unequivocal term stated that the party has accepted an amount of Rs.15,000/- towards full and final settlement of his claims. It is also clear from the applications and records that at that time, the learned Single Judge was aware that claim made by the appellant was not only in respect of performancee increment but towards retrenchment compensation, back wages from 1.4.1989 to 31.1.1992, Annual increment and consequential benefits with interest at the rate of 12% for 82 months. Thus, when said "Note for Speaking to Minute" was disposed of by the learned Single Judge, the learned Single Judge was conscius of other claims of the applicant. The learned Single Judge has also observed; "I have gone through the Note for Speaking to minutes ....". Thus, the learned Single Judge had perused the application. Having perused it, he passed the above order. In these circumstances, in our opinion, it is not open to us to state that the learned Single Judge was not aware of other claims and the order regarding payment of Rs.15,000- was only in respect of performance increment and other claims were not decided by him.

The Hon'ble Supreme Court has held that when a statement is made in the judgment, it must be accepted as true and correct (Vide State of Maharashtra v. Ramdas Shrinivas Nayak, AIR 1982 SC 1249). Hence, in our opinion, no relief can be granted to the appellant.

There is an additional reason why the appellant is not entitled to any relief. According to appellant, his services were terminated on 31st March 1989, whereas

according to the respondent, he was retired from service on reaching the age of superannuation. The appellant approached Industrial forum by filing two applications invoking Sec.33-C(2) of the Act being Recovery Application No.2619/89 and 3317/89. Both the applications were rejected and the above petition was filed. It was contended by Mr.Patel, learned counsel for the respondent that both the applications were also not maintainable under Sec.33-C(2) of the Act as condition precedent for making of such application was not complied with. It was urged that there must be an order or award in favour of a workman concerned. Unless the rights of the parties are crystalised in the form of an award or order, no application under Sec.33-C (2) would lie as they are in the nature of execution proceedings. For that, reliance was placed on decisions of M/s Punjab Beverages Pvt.Ltd. Chandigarh vs. Suresh Chand and another, AIR 1978 SC 995, and Full Bench decision of this court in Nizamuddin Suleman vs. New Shorrock Spg. & Mfg. Mills Co.Ltd. Nadiad, 20 GLR 290. In the above cases, it was held that an application under Section 33 C(2) would lie only after the rights of the parties are crystalised. In the instant case, an action was taken against the appellant but the said action was not challenged by taking any proceeding and the said action was not declared illegal or bad in law and directly an application under Sec.33-C (2) was filed. Such application was, therefore, not maintainable.

Mr.Shukla, contended that no such point was taken by the learned counsel for the management before the learned Single Judge and in Letters Patent Appeal at final hearing, no such contention should be allowed. In our opinion, however, when the question is about maintainability of application and point is concluded by the pronouncement of Hon'ble Supreme Court as well as Full Bench of this court in our opinion, such a contention can be permitted to be raised.

Mr.Patel also submitted relying on a decision of the Supreme Court in Syndicate Bank and another vs. K.Umesh Nayak, (1994) 5 SCC 572 that the appellant is not entitled to the salary as he had not worked. According to him, the principle of "no work no pay" would apply and even if the action is held to be bad, the appellant is not entitled to salary. We are not impressed by the said argument in view of the fact that here the appellant had not left the service on his own, but he was prevented by an action of management which according to him was illegal. In the facts of the case, however, the appellant is not entitled to salary on the above two

grounds; namely, (i) under the order passed by the learned Single Judge he was entitled to Rs.15,000/- towards all his claims; and (ii) his applications under Sec.32-C(2) were not mainainable. We are of the view that the appellant is not entitled to any relief.

For the foregoing reasons, we do not see any ground to interfere with the order passed by the learned Single Judge. Letters Patent Appeal deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

Dt.30.3.1998. (C.K.THAKKER J.)

(A.L.DAVE J.)